

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
BATESVILLE DIVISION**

**POLLY STRATTON
ADC #750283**

PLAINTIFF

VS.

CASE NO. 1:07CV00053 JMM

JOHN MAPLES, JR. ET AL.

DEFENDANTS

ORDER

Pending before the Court is plaintiff's Motion to Re-Open Case (#240) and the Proposed Findings and Recommended Disposition submitted by United States Magistrate Judge H. David Young to which the plaintiff has objected (#245), a Motion for Mental and Physical Evaluation (#246), a Motion to Extend Time (#248), and a Motion for Legal Aid (#248) filed in support of her Motion to Re-Open.

In her Motion to Re-Open, plaintiff contended that her case should be reopened because of two incidents of alleged excessive force which occurred after the voluntary dismissal of her case on July 8, 2008. In his findings and recommendation the Magistrate Judge correctly stated that plaintiff's allegations against persons who are not defendants in her dismissed case were not related to her dismissed claims, and while they may support a new lawsuit, they would not provide an adequate basis for reopening the case.

In her objections, plaintiff contends that the allegations in her Motion to Re-Open are not new claims, rather they are evidence of the continuing abuse which results from her lack of

medication. It is, she contends, this lack of medication which is the basis of her lawsuit.

Based upon plaintiff's reasoning stated in her objections which was not before the Magistrate Judge when he made his findings and recommendation, the Court will grant plaintiff's Motion to Re-Open her case (#240). However the Court adopts the Magistrate Judge's Findings and Recommended Disposition that the excessive force claims based upon incidents occurring on October 13, 2008, and November 13, 2008, raised in her Motion to Re-Open will not be considered claims in plaintiff's lawsuit.

Because plaintiff's Motion to Re-Open has been granted, her Motion for Mental and Physical Evaluation (#246), Motion for Extension of Time (#248), and Motion for Legal Aid (#248) filed in support thereof are dismissed as moot.

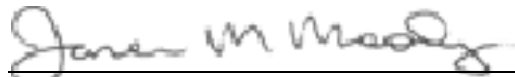
With the case being reinstated, there is now pending before this Court a Motion for Reconsideration of the Order Adopting the Magistrate Judge's recommendation that her motion for injunctive relief be denied (#209). Prior to granting plaintiff's Motion to Dismiss, plaintiff was given additional time to present evidence to this Court related to the Motion to Reconsider which she contends was suppressed by the Magistrate Judge. The Court received those documents and had reviewed them prior to plaintiff's Motion to Dismiss.¹

After reviewing the record *de novo*, listening to the tape of the hearing held on May 12, 2008, and considering the previous documents submitted by plaintiff, the Motion for Reconsideration is denied (#209).

¹These documents were returned to plaintiff on July 8, 2008, rendering her Motion for Order to Gain Evidence filed on July 7, 2008 (#229) and Request for Court to Return Evidence filed on July 15, 2008, (#239) moot.

The Clerk of the Court is directed to reopen the case and the case is referred back to the Magistrate Judge for appropriate action.

IT IS SO ORDERED THIS 26 day of January, 2008.

A handwritten signature in cursive script, appearing to read "James M. Moody", written in dark ink.

James M. Moody
United States District Judge